

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 8855 of 2002

For Approval and Signature:

Hon'ble MR.JUSTICE P.B.MAJMUDAR

- =====
1. Whether Reporters of Local Papers may be allowed to see the judgements? : YES
 2. To be referred to the Reporter or not? : YES
 3. Whether Their Lordships wish to see the fair copy of the judgement? : NO
 4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO
 5. Whether it is to be circulated to the concerned Magistrate/Magistrates, Judge/Judges, Tribunal/Tribunals? : NO

BALKRISHNA AMBALAL THAKKAR

Versus

STATE OF GUJARAT

Appearance:

1. Special Civil Application No. 8855 of 2002
MR HR PRAJAPATI for Petitioner No. 1
MR PANCHOLI, AGP for Respondent No. 1-3
MS PJ DAVAWALA for Respondent No. 4
RULE SERVED for Respondent No. 4
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CORAM : MR.JUSTICE P.B.MAJMUDAR

Date of decision: 16/01/2003

ORAL JUDGEMENT

#. It is a matter of regret that, even though, this Court has taken the view, more than 15 years back, to the effect that, if any order is passed releasing the seized goods, it is required to be placed before the detaining authority. Yet, in the instant case, such order is not produced by the sponsoring authority before the detaining authority and the detaining authority has not considered the said aspect in the detention order, may be because the said document was not made available to it by the sponsoring authority.

#. Apart from the aforesaid aspect, the State Government has not even cared to launch appropriate proceedings under Section 7 of the Essential Commodities Act 1955, as, even if the detention order is passed, the State is not prevented from launching the ordinary prosecution under the aforesaid provision. The petitioner, who is alleged to have indulged in the activities of black marketing by selling kerosene by charging high price, is not even subjected to the prosecution under Section 7 of the Act wherein imprisonment is provided for a term upto 7 years. It is exhibited in the present case as to how the authority is dealing with the cases under the Prevention of Black Marketing and Maintenance of Supplies of Essential Commodities Act, 1980.

#. By filing this petition, the petitioner has challenged the detention order dated 16.8.2002, which is at page 15 - Annexure-A in the compilation. By the impugned order, the detenu is detained by the District Magistrate, Kheda, in exercise of the powers conferred upon him under Section 3(1) of the Prevention of Black Marketing and Maintenance of Supplies of Essential Commodities Act, 1980.

#. It is alleged against the detenu that the detenu is doing the business in the name and style of "Jai Jalaram Ayati Kerosene Depot". It is found that the detenu has tried to sell blue kerosene by converting the same into white kerosene, and that he has sold the same by charging high price. It is alleged that, instead of selling the white kerosene, the detenu has tried to sell blue kerosene illegally, which is an essential commodity. It is alleged that the detenu kept 1472 liters of blue kerosene illegally in the shop with the object and purpose of making profit. The grounds of detention are placed on record at page 17 - Annexure-B in the compilation. The aforesaid detention order is challenged by the detenu on various grounds.

#. At the time of hearing of this petition, learned

advocate, for the petitioner argued that certain quantity of kerosene was seized by the Director of Civil Supplies Department by seizure order dated 24.11.2001 and 3781 liters of kerosene were seized by the department, and, subsequently, a show cause notice was issued to the detenu on 25.1.2002 to show cause as to why the said seized quantity should not be confiscated. The detenu, thereafter, gave reply to the said show cause notice and, thereafter, by order dated 31.5.2002, the Deputy Director, Civil Supplies Department, released substantial part of seized goods, and, ultimately, 378 liters of kerosene was ordered to be seized and rest of the quantity of the seized goods was ordered to be released. It is submitted that the detention order is subsequent in time, as, the same is passed on 16.8.2002. However, there is no mention about releasing of the aforesaid quantity in the detention order, nor even the order passed by the Director is considered by the detaining authority. It is, no doubt, true that, initially, 1472 liters of kerosene were seized by the department and, subsequently, by order dated 31.5.2002, the Director thought it fit to release substantial part of the seized goods and the said aspect has not been taken care at all in the order by the detaining authority. The Director of Civil Supplies Department is the sponsoring authority. Either the sponsoring authority has not sent the aforesaid document to the detaining authority or the detaining authority has not taken the same into account at the time of passing the detention order. In my view, this is a serious lapse on the part of the sponsoring authority or the detaining authority. A Division Bench in an unreported case of Kishanbhai D.Chandani Vs. State of Gujarat and others in Special Criminal Application No.306 of 1986 has held that after the seizure, if any part of the seized goods is released, the said aspect is required to be placed before the detaining authority. Even though, this view is taken by the Division Bench long back, unfortunately, the authority has yet not thought it fit to place the said document before the detaining authority. It is difficult to understand the reason as to why the order of releasing the part of seized goods is not placed before the detaining authority, even though, such release order was passed as back as in May, 2002, while the detention order is passed at a later stage, i.e. on 16.8.2002.

#. Apart from the aforesaid aspect, there is a provision for passing the appropriate order under Section 7 of the Essential Commodities Act, 1955. Relevant part of Section 7 of the Essential Commodities Act, 1955 reads as under.:

"Penalties.- (1) If any person contravenes any order made under Section 3,-

(a) he shall be punishable,-

(i) in the case of an order made with reference to clause (h) or clause (i) of sub-section (2) of that section, with imprisonment for a term which may extend to one year and shall also be liable to fine, and

(ii) in the case of any other order, with imprisonment for a term shall not be less than three months but which may extend to seven years and shall also be liable to fine:

#. So far as the present case is concerned, the same falls within Clause (ii) of Section 7 and even the detenu can be convicted and can be subjected to imprisonment upto a period of 7 years. Even if the order of detention is passed by way of preventive detention, it was the duty of the authority even to initiate the proceedings under the above referred to provision, which has not been done, as, there is an averment to that effect in the petition, which is not denied. The preventive detention, under the provisions of the Prevention of Black Marketing and Maintenance of Supplies of Essential Commodities Act, 1980, is only upto the maximum period of six months, and, if the proceedings are taken under Section 7, the period of imprisonment is upto 7 years. Even if the detenu was to be detained under the preventive detention, there is no bar for initiation of the proceedings under Section 7 where the imprisonment period is longer. The authority has allowed the detenu to go scot-free practically by not even initiating the proceedings under the aforesaid provision. The sponsoring authority itself has not taken aforesaid illegality on the part of the detenu as of a serious nature as substantial quantity of the seized goods was allowed to be released. This is the manner in which the authority has taken this detention matter where there is serious allegation of black marketing against the detenu.

#. It is hoped that the authority will apply its mind properly in future cases in this behalf. The averment of the detenu about releasing the part of the seized goods is not even denied in the affidavit-in-reply by the authority and since the said material is not placed before the detaining authority and since there is no reference about the same in the order of the detaining

authority, this petition is required to be allowed, as, the subjective satisfaction of the detaining authority can be said to have been vitiated on account of nonavailability of the aforesaid important document. Accordingly, this petition is allowed. The order of detention dated 16.8.2002 is quashed and set aside. The detenu - Balkrishna Ambalal Thakkar is ordered to be set at liberty forthwith if not required in any other case. Rule is made absolute accordingly.

#. Copy of this order be sent to the Secretary, Civil Supplies Department, Gandhinagar for information and taking appropriate steps in future cases.

Direct service is permitted.

(P.B.Majmudar, J)
(pathan)